

Introduced by Senator Scott

February 16, 2005

An act to amend Sections 7612, 7630, 7660.5 and 9003 of the Family Code, relating to adoption.

LEGISLATIVE COUNSEL'S DIGEST

SB 302, as introduced, Scott. Adoption.

Existing law provides that a man is presumed to be the natural father of a child if certain conditions are met. This presumption may be rebutted by a judgment establishing paternity of the child by another man. Existing law also authorizes a child, the child's natural mother, or, with certain exceptions, a presumed father of the child to bring an action to determine paternity, as specified.

Existing law provides that if a mother relinquishes for or consents to, or proposes to relinquish for or consent to, the adoption of a child who has a presumed father, the father must be given notice of the adoption proceeding and a child may not be adopted without his consent, except under specified circumstances. However, a presumed father may waive his right to notice by executing a specified form before certain persons, such as a notary public.

Existing law also provides that, in a stepparent adoption, the consent of either or both birth parents must be signed in the presence of a county clerk, probation officer, qualified court investigator, or county welfare department staff member of any county of this state.

This bill would provide that in an adoption the presumption described above may also be rebutted by clear and convincing evidence that another man is the natural father. The bill would authorize a presumed father to waive his right to notice of adoption proceedings by executing the form described above before a representative of a licensed adoption agency or a private child

placement agency licensed by this state. In a stepparent adoption, the bill would authorize the consent of either or both birth parents to be signed in the presence of a notary public.

The bill would additionally authorize an adoption agency to whom the child has been or is proposed to be relinquished or a person who intends to adopt the child to bring an action to determine paternity.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 7612 of the Family Code is amended to
2 read:

3 7612. (a) Except as provided in Chapter 1 (commencing with
4 Section 7540) and Chapter 3 (commencing with Section 7570) of
5 Part 2 or in Section 20102, a presumption under Section 7611 is
6 a rebuttable presumption affecting the burden of proof and may
7 be rebutted in an appropriate action only by clear and convincing
8 evidence.

9 (b) If two or more presumptions arise under Section 7611
10 which conflict with each other, the presumption which on the
11 facts is founded on the weightier considerations of policy and
12 logic controls.

13 (c) The presumption under Section 7611 is rebutted by a
14 judgment establishing paternity of the child by another man, *or,*
15 *in the case of an adoption, by clear and convincing evidence that*
16 *another man is the natural father.*

17 SEC. 2. Section 7630 of the Family Code is amended to read:

18 7630. (a) A child, the child's natural mother, ~~or~~ a man
19 presumed to be the child's father under subdivision (a), (b), or (c)
20 of Section 7611, *an adoption agency to whom the child has been,*
21 *or is proposed to be, relinquished, or a person who intends to*
22 *adopt the child,* may bring an action as follows:

23 (1) At any time for the purpose of declaring the existence of
24 the father and child relationship presumed under subdivision (a),
25 (b), or (c) of Section 7611.

26 (2) For the purpose of declaring the nonexistence of the father
27 and child relationship presumed under subdivision (a), (b), or (c)
28 of Section 7611 only if the action is brought within a reasonable
29 time after obtaining knowledge of relevant facts. After the

presumption has been rebutted, paternity of the child by another man may be determined in the same action, if he has been made a party.

(b) Any interested party may bring an action at any time for the purpose of determining the existence or nonexistence of the father and child relationship presumed under subdivision (d) or (f) of Section 7611.

(c) An action to determine the existence of the father and child relationship with respect to a child who has no presumed father under Section 7611 or whose presumed father is deceased may be brought by the child or personal representative of the child, the Department of Child Support Services, the mother or the personal representative or a parent of the mother if the mother has died or is a minor, a man alleged or alleging himself to be the father, or the personal representative or a parent of the alleged father if the alleged father has died or is a minor.

(d) An action under subdivision (c) shall be consolidated with a proceeding pursuant to Section 7662 if a proceeding has been filed under Chapter 5 (commencing with Section 7660). The parental rights of the alleged natural father shall be determined as set forth in Section 7664. The consolidated action shall be heard in the court in which the Section 7662 proceeding is filed, unless the court in which the action under subdivision (c) is filed finds, by clear and convincing evidence, that transferring the action to the other court poses a substantial hardship to the petitioner. Mere inconvenience does not constitute a sufficient basis for a finding of substantial hardship. If the court determines there is a substantial hardship, the consolidated action shall be heard in the court in which the paternity action is filed.

SEC. 3. Section 7660.5 of the Family Code is amended to read:

7660.5. Notwithstanding any other provision of law, if a presumed father waives the right to notice pursuant to Section 7660 in writing by executing a form developed by the department using existing resources before a *representative of a licensed adoption agency or private child placement agency licensed by this state* or before a notary public or other person authorized to perform notarial acts, no notice, relinquishment for, or consent to adoption of the child shall be required from him for the adoption proceeding to proceed. This shall be a voluntary and informed

1 waiver without undue influence. If the child is an Indian child as
2 defined under the Indian Child Welfare Act (ICWA), any waiver
3 of consent by an Indian presumed father shall be executed in
4 accordance with the requirements for voluntary adoptions set
5 forth in Section 1913 of Title 25 of the United States Code. The
6 waiver shall not affect the rights of any known federally
7 recognized Indian tribe or tribes from which the child or the
8 presumed father may be descended to notification of, or
9 participation in, adoption proceedings as provided by the ICWA.
10 Notice that the waiver has been executed shall be given to any
11 known federally recognized Indian tribe or tribes from which the
12 child or the presumed father may be descended, as required by
13 the ICWA.

14 SEC. 4. Section 9003 of the Family Code is amended to read:

15 9003. (a) In a stepparent adoption, the consent of either or
16 both birth parents shall be signed in the presence of a *notary*
17 *public*, county clerk, probation officer, qualified court
18 investigator, or county welfare department staff member of any
19 county of this state. The *notary public*, county clerk, probation
20 officer, qualified court investigator, or county welfare department
21 staff member before whom the consent is signed shall
22 immediately file the consent with the clerk of the court where the
23 adoption petition is filed. The clerk shall immediately notify the
24 probation officer or, at the option of the board of supervisors, the
25 county welfare department of that county.

26 (b) If the birth parent of a child to be adopted is outside this
27 state at the time of signing the consent, the consent may be
28 signed before a notary or other person authorized to perform
29 notarial acts.

30 (c) The consent, when reciting that the person giving it is
31 entitled to sole custody of the child and when acknowledged
32 before the *notary public*, county clerk, probation officer,
33 qualified court investigator, or county welfare department staff
34 member, is prima facie evidence of the right of the person
35 signing the consent to the sole custody of the child and that
36 person's sole right to consent.

37 (d) A birth parent who is a minor has the right to sign a
38 consent for the adoption of the birth parent's child and the
39 consent is not subject to revocation by reason of the minority.

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